

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25
Date: 20 August 2026

APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding
Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Erdenebalsuren Damdin

SITUATION IN LIBYA

IN THE CASE OF *THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI*

PUBLIC

Defence request for an extension of the page limit for the appeal brief

Source: Defence for Mr Khaled Mohamed Ali El Hishri

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. Pursuant to Regulation 37(2) of the Regulations of the Court, the Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) files this request for an extension of the page limit to 35 pages for its appeal brief against the “Decision on the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute”. The Defence submits that exceptional circumstances, as required by Regulation 37(2), exist and justify the requested extension.

II. PROCEDURAL HISTORY

2. On 30 April 2026, the Defence filed its challenge to the jurisdiction of the International Criminal Court (“Challenge”).¹

3. On 15 July 2026, Pre-Trial Chamber I issued its decision on the Challenge, by which it rejected the Challenge on all grounds (“Impugned Decision”).²

4. On 17 July 2026, the Defence filed its Notice of Appeal against the Impugned Decision.³

5. On 22 July 2026, the Defence filed a request for the suspension of the time limit contained in Regulation 64(2) in light of the judicial recess.⁴

6. On 24 July 2026, the Presiding Judge issued a decision granting the Defence request for the suspension of the Regulation 64(2) time limit, finding good cause to extend the time limit for filing the appeal brief on 28 August 2026.⁵

¹ Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute, [ICC-01/11-01/25-108-Conf-Corr](#) (corrected and public redacted versions filed on 6 May 2026).

² Decision on the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute, [ICC-01/11-01/25-142](#).

³ Notice of Appeal Against “Decision on the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute”, [ICC-01/11-01/25-145](#).

⁴ Defence request for suspension of regulation 64(2) time limit, [ICC-01/11-01/25-151](#).

⁵ Decision on “Defence request for suspension of regulation 64(2) time limit”, [ICC-01/11-01/25-155](#).

III. SUBMISSIONS

7. The Defence notes that, in accordance with Regulation 37(1), the applicable page limit for documents filed with the Registry (which would include the forthcoming brief in the Defence appeal against the Impugned Decision) is 20 pages, unless it is extended in “exceptional circumstances” under Regulation 37(2).

8. While striving for conciseness in the preparation of its appeal brief, the Defence is of the considered view that a modest page extension is required in order that it may fully address all the issues in the Impugned Decision that are to be challenged.

9. The Appeals Chamber has consistently held that exceptional circumstances justifying an extension of a page limit can exist due to (i) the nature of the issues on appeal, (ii) the novelty of the issue(s) on appeal, and (iii) the degree of complexity of the appeal.⁶ The Defence submits these three factors are of relevance to this extension request.

a) The nature of the issues on appeal

10. Firstly, the Defence highlights the general importance of jurisdictional challenges under article 19 of the Statute, as the existence of jurisdiction is a *sine qua non* for legal proceedings before the Court. As a rule, an Accused has a single opportunity to challenge the Court’s jurisdiction.⁷ It is in the interests of justice that the Appeals Chamber be assisted with submissions that are as fully developed as possible for a factually and legally thorough determination of the crucial question of whether or not there will be any further proceedings against Mr El Hishri.

11. Furthermore, the nature of this litigation is exceptional in that it deals with the

⁶ *The Prosecutor v. Ntaganda*, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, ICC-01/04-02/06-2415, 20 September 2019, para. 20.; *The Prosecutor v. Bemba et. al*, Decision on Mr Babala’s request for an extension of page limit for his document in support of the appeal, ICC-01/05-01/13-2124, 23 March 2017, para. 7.; *The Prosecutor v. Al Hassan*, Decision on the ‘Defence request for extension of page limit for its appeal brief’ ICC-01/12-01/18-2656, 17 October 2024, paras. 12-14.

⁷ Article 19(4) of the Rome Statute

question of the relationship between the Court and the Security Council (“UNSC”) in terms of Article 13(b) of the Rome Statute. The scope of the Defence arguments goes beyond questions of international criminal law and addresses profound issues of public international law.⁸

b) The novelty of the issues on appeal

12. The Impugned Decision touched upon different aspects which are novel in the jurisprudence of the Court. Mr El Hishri’s jurisdictional challenge is legally unprecedented insofar as his case refers to alleged criminality that post-dates the UNSC referral, and, the Defence submits, allegedly occurs in a context markedly different to the one subsisting at the time of the UNSC referral. Specifically, the Appeals Chamber will be asked to rule for the first time on the applicability of the terms of a UNSC referral to the specific contours of a case, the principles governing the interpretation of UNSC referrals and the matter of its subsequent conduct and that of other actors, as well as the role of evidence which relates strictly to jurisdiction.

c) The complexity of the issues on appeal

13. The issues on appeal are complex. The Defence is obliged to challenge them exhaustively. The clearest indication of the legal controversies at hand is that Judge Flores Liera issued a separate opinion disagreeing with the analysis carried out by the Majority regarding the application of Resolution 1970.⁹

14. For these reasons, the Defence respectfully requests leave to exceed the standard page limit in order to provide fully developed submissions with the aim of providing as much assistance as possible to the Appeals Chamber in deliberations, and with the

⁸ *The Prosecutor v. Bemba*, Order granting the defence request for extension of the page limit for its submissions on whether the procedures developed in the Lubanga case should be varied during the course of the trial in *The Prosecutor v. Jean Pierre Bemba Gombo*, ICC-01/05-01/08-615, 26 November 2009, para. 7

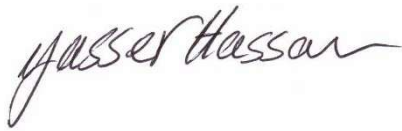
⁹ Concurring separate opinion of Judge María del Socorro Flores Liera, ICC-01/11-01/25-142-OPI

ultimate aim of contributing to the proper administration of justice. The Defence would not object to a commensurate page extension for any Prosecution or LRV response.

IV. RELIEF SOUGHT

15. For the foregoing reasons, the Defence respectfully requests that the Appeals Chamber grant an extension for the page limit of the appeal brief to 35 pages.

16. Respectfully submitted,



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 20 August 2026
at The Hague, The Netherlands